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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 586/2014

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	R.G. et al. (represented by counsel, Johan Lagerfelt)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	21 January 2014 (initial submission)
Date of present decision:	25 November 2015
Subject matter:	Deportation to the Russian Federation
Procedural issues:	Admissibility; - substantiation
Substantive issues:	Non-refoulement
Articles of the Convention:	3 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 586/2014*

Submitted by:	R.G. et al. (represented by counsel, Johan Lagerfelt)
Alleged victims:	The complainants
State party:	Sweden
Date of complaint:	21 January 2014 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of complaint No. 586/2014, submitted to it by R.G. et al. under article 22 of the Convention,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainants are R.G., his wife L.G. and their children, all four of them minors. The complainants are nationals of the Russian Federation, of Chechen ethnicity, and belong to the Mialkhiy minority group. At the time of submission they were residing in Sweden and awaiting deportation to the Russian Federation. They claim that their deportation to the Russian Federation by Sweden would violate their rights under article 3 of the Convention. The family's deportation was not scheduled for a specific date. However, at the time that the complaint was submitted to the Committee, the family had already been summoned to the Migration Board to discuss their return. The complainants are represented by counsel.

1.2 Under rule 114 of its rules of procedure, the Committee requested the State party, on 30 January 2014, not to deport the complainants to the Russian Federation while their communication was under consideration by the Committee.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

Facts as presented by the complainants

2.1 The first complainant, R.G., was born in Kazakhstan on 12 August 1969, his wife and three elder children were born in Chechnya; the youngest child was born in April 2012 in Sweden. The first complainant was an active resistance fighter in the 1994-1996 conflict in Chechnya. In 1999, when the conflict restarted, he continued to support the Chechen resistance by delivering food and supplies to the partisans.

2.2 In 2007, the first complainant was suspected of having killed a group of policemen. He was arrested, held incommunicado for 10 days, beaten severely, hung upside down and tortured with electricity. His teeth were broken and he also suffered a number of fractures of his ribs. Upon paying a bribe to the authorities, he was released, after which he was hospitalized for two months to recover from his injuries. After having recovered, he kept on delivering assistance to Chechen partisans while trying to keep a low profile.

2.3 In September 2011, the first complainant's nephew was arrested on suspicion of being involved, in August 2011, in explosions in Grozny. The complainant was alerted by an acquaintance in the police that an arrest warrant had also been issued against him. He was worried he might be arrested, as he believed his nephew would be tortured and would not be able to resist the interrogations. Consequently he fled to Ingushetia. The next day, he called his wife, who informed him that security forces had visited the house and burned his car, and that they had found weapons outside the house. The complainant claims that those weapons must have been planted by the authorities in order to frame him.

2.4 Thereafter, the first complainant's wife sold the house and paid the authorities a bribe in order to close the investigation file against him. Instead, she found herself accused of being an accomplice. The security forces frequently inquired about the whereabouts of the complainant. The complainant's wife and children were able to join him in Ingushetia only in late February 2012, at which time they decided to leave the Russian Federation. On 11 March 2012, they arrived in Sweden.

2.5 The complainants applied for asylum on 12 March 2012. On 15 July 2013, the Migration Board denied their application, citing a lack of consistency in the complainants' testimony and a lack of credibility. The Board was not convinced that their latest domicile was in Chechnya. Moreover, the Board decided that the situation in Chechnya had changed since 2007 and that the authorities of the Russian Federation were interested in those still actively resisting the regime, and not in former militants. The Board, however, accepted that the complainant had been active during the 1994-1996 and 1999 conflicts and that he had been tortured in 2007 by the police and released upon paying a bribe. The Board finally concluded that there was neither an ongoing armed conflict nor any other serious conflict in Chechnya.

2.6 The complainants appealed to the Migration Court, which rejected the appeal on 19 November 2013. The Court concluded that the fact the complainant was tortured in 2007 in itself was not a sufficient ground for protection. It further reiterated the Board's conclusion that the nature of the conflict in Chechnya had changed since 2007 and that the complainants' testimonies were not trustworthy.

2.7 On 19 December 2013, the Migration Court of Appeals denied the complainants' request for leave to appeal. The Migration Court's decision thereby became final. The complainants maintain that they have exhausted all domestic remedies.

The complaint

3.1 The complainants submit that there are substantial grounds for believing that the first complainant would be tortured if returned to the Russian Federation. The first complainant claims that, in 2003, his brother was beaten to death while in police custody

and that his nephew's whereabouts since his arrest in September 2011 remain unknown and that it is not unreasonable to believe that his nephew died while in police custody. In addition, he claims that his wife was visited by the security forces looking for him after he fled to Ingushetia. He concludes that the events demonstrate a pattern of personal harassment and persecution. The complainants conclude that, if deported, Sweden would be in violation of its non-refoulement obligation under article 3 of the Convention.

3.2 The complainants submit a letter from 4 February 2011 on the treatment of protection applications that may be lodged by Chechen refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR).[1] According to that note, whereas in 2003 there was a sweeping UNHCR assessment that all Chechen asylum seekers were in need of international protection, in 2011 the situation had changed given the overall improvement in the security situation. UNHCR stated, however, that members of illegal armed formations and their relatives, political opponents and human rights activists were among those whose personal safety and rights could be at risk. UNHCR recommended that all protection applications from Chechen refugees should be considered on the basis of their respective individual merit. It added that internal relocation within either Chechnya or other parts of the Russian Federation should not be considered as available for Chechen asylum seekers fleeing persecution in the meaning of article 1A of the Convention relating to the Status of Refugees.

State party's observations on admissibility and the merits

4.1 On 11 July 2014, the State party submits that the complainants' case had been assessed under the 2005 Aliens Act, which entered into force on 31 March 2006. Since the Committee is well aware of the content of the relevant domestic law from other cases against Sweden concerning the expulsion of aliens, and since the domestic decisions and judgements contain descriptions of the relevant domestic law of which the complainants should also be well aware, the State party does not find it necessary to add any information in this regard. It may nevertheless be worth mentioning that the 2005 Aliens Act, and the amendments to that Act, are available in English on the Internet.

4.2 The State party submits that the first, second, third, fourth and fifth complainants, according to their own information, arrived in Sweden on 11 March 2012 and applied for asylum the following day. The sixth complainant was born in Sweden on 27 April 2012 and, through his public counsel, applied for asylum on 8 August 2012. The Migration Board rejected their applications and decided on 15 July 2013 to expel them to the Russian Federation. The decision was appealed to the Migration Court, which on 19 November 2013 rejected the appeal. On 19 December 2013, the Migration Court of Appeal refused leave to appeal and the decision to expel the complainants became final and not open to appeal.

4.3 The State party submits that, according to chapter 12, section 22, first paragraph of the Aliens Act, an expulsion order that has not been issued by a general court expires four years after the order has become final and is not open to appeal. In this regard, the State party would like to draw the Committee's attention to the fact that the decision to expel the complainants will thus become statute-barred on 19 December 2017. This means, firstly, that the decisions to expel the complainants will no longer be enforceable after that date and that the complainants will then no longer be under threat of expulsion. Secondly, a new application for asylum and a residence permit and the reasons put forward in support thereof will be re-examined in full and a negative decision by the Migration Board is

[1] The complainant presents a copy of a letter to his counsel signed by a Senior Regional Legal Officer of the Office of the High Commissioner for Refugees, dated 4 February 2011.

subject to appeal to the Migration Court and the Migration Court of Appeal. Moreover, arrangements for the enforcement of an expulsion order may take a long time. It is hence of the utmost importance that the Committee consider the admissibility and/or the merits of the present communication well before that date in order to leave enough time for such arrangements should the Committee's examination lead to a finding that the communication is inadmissible or that it reveals no violation of the Convention.

4.4 The State party submits that the complainants essentially claim before the Committee that the first complainant was arrested and tortured in 2007 by the Chechen authorities and accused of being involved in the killing of several police officers. Furthermore, in 2011, he was falsely accused of having been involved in a number of explosions in Grozny in August of that year and accused of possession of illegal firearms and explosives. The second complainant claims that she has been accused of being an accomplice to the first complainant's activities. The third, fourth, fifth and sixth complainants essentially claim the same grounds for asylum as their parents. The complainants claim that their lives would be in danger if they were returned to the Russian Federation. They have thus alleged that expelling them to the Russian Federation would constitute a violation of article 3 of the Convention.

4.5 The State party submits that it is not aware of any information indicating that the present matter is or has been the subject of any other procedure of investigation or settlement. It expects the Committee to confirm the above in the course of its examination of the admissibility of the communication.

4.6 The State party does not contest the claim that all available domestic remedies have been exhausted in the present case.

4.7 The State party maintains that the complainants' assertion that they are at risk of being treated in a manner that would amount to a breach of article 3 of the Convention if returned to the Russian Federation fails to rise to the minimum level of substantiation required for purposes of admissibility. The State party accordingly submits that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention and rule 113 (b) of the Committee's rules of procedure.[2] General reference is made in this context to what is stated below on the merits.

4.8 The State party submits that, should the Committee conclude that the communication is admissible, the issue before the Committee is whether the forced return of the complainants to the Russian Federation would violate the obligation of Sweden under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. When determining whether the forced return of a person to another State would constitute a violation of article 3, the Committee must take into account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in that country. However, as the Committee has repeatedly emphasized, the aim of such a determination is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would be returned. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being subjected to torture upon his or her return to that country. For a violation of article 3 to be

[2] The State party refers to, inter alia, communication No. 216/2002, *H.I.A. v. Sweden*, decision of inadmissibility adopted on 2 May 2003, para. 6.2.

established, additional grounds must exist showing that the individual concerned would be personally at risk.[3]

4.9 The State party maintains that, when determining whether the forced return of the complainants to the Russian Federation would constitute a breach of article 3 of the Convention, the following considerations are relevant: (a) the general human rights situation in the Russian Federation; and, in particular, (b) the personal risk of the complainants being subjected to torture, following their return there. Furthermore, the State party recalls the Committee's jurisprudence stating that the burden of proof in cases such as the present one rests with the complainant, who must present an arguable case establishing that he or she runs a foreseeable, real and personal risk of being subjected to torture.[4] In addition, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. Although the risk does not have to meet the test of being highly probable, it must be personal and present.[5]

4.10 The State party maintains that, as the Russian Federation is a party to the Convention and to the International Covenant on Civil and Political Rights, it is assumed that the Committee is well aware of the general human rights situation in that country, including the current situation in Northern Caucasus. In this regard, the State party therefore finds it sufficient to refer to the information regarding the human rights situation in the Russian Federation that can be found in recent reports.[6] While existing reports show that the general level of violence and serious human rights violations in Chechnya, Russian Federation, has decreased in recent years, the State party notes that human rights violations, including disappearances, abuse, torture and killings, are still being reported. For this reason, the State party does not wish to discount the concerns that may legitimately be expressed over the current human rights situation in the Russian Federation and especially in the Northern Caucasus region. However, the current situation in Chechnya, as described in the above-mentioned reports, does not, in itself, suffice to establish that the general situation in the region is such that an expulsion of the complainants would entail a violation of article 3 of the Convention.[7] Hence, the State party contends that the expulsion of the complainants to the Russian Federation would only entail a breach of the Convention if they could show that they would be personally at risk of being subjected to treatment

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[3] The State party refers to communications No. 150/1999, *S.L. v. Sweden*, Views adopted on 11 May 2001, para. 6.3, and No. 213/2002, *E.J.V.M. v. Sweden*, decision adopted on 14 November 2003, para. 8.3.

[4] The State party refers to communication No. 178/2001, *H.O. v. Sweden*, Views adopted on 13 November 2001, para. 13, and communication No. 203/2002, *A.R. v. the Netherlands*, decision of 14 November 2003, para. 7.3.

[5] The State party refers to, for example, Committee's general comment No. 1(1997) on the implementation of article 3 of the Convention in the context of article 22, paras. 5-7.

[6] The State party refers to United States of America, Department of State, *Human Rights Report on Russia 2013*; Amnesty International, *Annual Report 2013 – Russian Federation*, Human Rights Watch, *World Report 2014: Russia*; the Swedish Migration Board, Country Profile – Russian Federation (*Landprofil Ryssland*), 25 February 2011; Sweden, Ministry for Foreign Affairs, *Mänskliga rättigheter i Ryska Federationen 2011*; Norwegian Country of Origin Information Centre, *Temanotat: Tsjetsjenia Sikkerhetssituasjonen*, 15 May 2014, and *Temanotat Tsjetsjenia: Tsjetsjenske myndigheters reaksjoner mot opprørere og personer som bistår opprørere*, 26 October 2012; Danish Refugee Council, *Flygtingenaevnets baggrundsmateriale, Landeprofil: Tjetjenien*; and European Council on Refugees and Exiles, *Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers and Refugees in Europe*.

[7] The State party refers to, for example, European Court of Human Rights, *J v. Sweden*, application No. 61204/09, judgement of 5 September 2013, para. 58.

contrary to article 3. The State party maintains that the complainants have failed to substantiate their claims that they would run such a risk.

4.11 The State party wishes to draw the Committee's attention to the fact that several provisions in the Aliens Act reflect the same principles as those laid down in article 3 of the Convention. Thus, the Swedish migration authorities apply the same kind of test when considering an application for asylum under the Aliens Act as the Committee applies when examining a complaint under the Convention. That such a test has been applied in the present case is indicated by the fact that, in their rulings, the Swedish authorities make reference to chapter 4, sections 1, 2 and 2a, of the Aliens Act. Furthermore, according to chapter 12, sections 1-3, of the Aliens Act, an alien may never be expelled to a country where there is fair reason to assume that the alien would be in danger of receiving the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment, or to a country where the alien is not protected from being sent on to a country in which the alien would be in such danger.

4.12 Moreover, the State party maintains that the national authorities are in a very good position to assess the information submitted by an asylum seeker and to appraise the credibility of his or her claims. In this regard, the State party wishes to underline that, in the present case, the Migration Board and the Migration Court conducted thorough examinations of the complainants' case. When the complainants applied for asylum, the Migration Board conducted multiple individual interviews with the first and second complainants to give them an opportunity to submit the reasons for their need for protection and to explain all the facts relevant to the Migration Board's assessment. The extensive interviews with the complainants were conducted in the presence of their legal counsel and an interpreter, whom the complainants confirmed they understood well. In addition, the Migration Board also conducted child-focused interviews with the second complainant in her capacity as parent of the third, fourth and fifth complainants and with the first and second complainants in their capacity as parents when an application for asylum was made on behalf of the sixth complainant, who was born in Sweden. Furthermore, the complainants have argued their case in writing before the Migration Board and the migration courts. Throughout the asylum procedure, the complainants were represented by a legal counsel. The decision of the Migration Board was appealed against, but was not overturned by the Migration Court. Against this background, the State party holds that it must be considered that the Migration Board and the migration courts had sufficient information, together with the facts and documentation in the case, to ensure that they had a solid basis for making a well-informed, transparent and reasonable risk assessment of the complainants' need for protection in Sweden.

4.13 In this connection, the State party wishes to recall paragraph 9 of the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention, as well as its jurisprudence, stating that the Committee is not an appellate, quasi-judicial or administrative body and that considerable weight will be given to findings of facts that are made by organs of the State party concerned.[8] Moreover, the Committee has held that it is for the courts of the States parties to the Convention, and not for the Committee, to evaluate the facts and evidence in a particular case, unless it can be ascertained that the manner in which such facts and evidence were evaluated was clearly arbitrary or amounted to a denial of justice.[9]

[8] The State party refers, for example, to communication No. 277/2005, *N.Z.S. v. Sweden*, decision adopted on 22 November 2006, para. 8.6.

[9] The State party refers, for example, to communication No. 219/2002, *G.K. v. Switzerland*, decision of 7 May 2003, para. 6.12.

4.14 The State party submits that the Migration Board and the migration courts are specialized bodies with particular expertise in the field of asylum law and practice and contends that there is no reason to conclude that the national rulings were inadequate or that the outcome of the domestic proceedings was in any way arbitrary or amounted to a denial of justice. Accordingly, the State party holds that great weight must be attached to the opinions of the Swedish migration authorities, as expressed in their rulings ordering the expulsion of the complainants to the Russian Federation.

4.15 In addition, the State party submits that the complainants have claimed that expelling them to the Russian Federation would be a violation of article 3 of the Convention as they risk being subjected to treatment contrary to the rights of the Convention upon return, mainly owing to accusations against the first complainant of involvement in explosions in Grozny in August 2011 and the possession of illegal firearms and explosives. The State party, like the migration authorities, considers that a number of factors give cause to question the veracity of the complainants' claim that they would risk being subjected to torture in violation of article 3 of the Convention upon return to the Russian Federation. The State party agrees with the assessment made by the Migration Board and the Migration Court that the complainants' accounts contain contradictory information and conflict with generally known facts about the complainants' country of origin. The State party thus takes the view that the complainants have failed to provide a credible account and will elaborate below on the circumstances of relevance to the assessment of the complainants' credibility in this regard.

4.16 Firstly, to support their identities, the complainants have submitted a military service book belonging to the first complainant, a domestic passport belonging to the second complainant and birth certificates belonging to the third, fourth and fifth complainants. The State party agrees with the view of the Migration Board and the Migration Court that the complainants have not plausibly established their identity by the above-mentioned documents. As the Migration Board has noted, the first complainant's military service book is old, of a simple nature and contains no recent notes. Furthermore, the page in the second complainant's domestic passport, on which the Russian authorities register information on whether and when an international passport or previous domestic passports has been issued, is missing. The second complainant has not given a reasonable explanation as to why one page is missing in her domestic passport. Furthermore, the third, fourth and fifth complainants' birth certificates are of a simple nature, with no photographs or verifiable certificate. In this respect the State party shares the Migration Board's view that it is likely that the complainants have withheld information of significance for the asylum process.

4.17 In the light of these findings and with regard to the fact that the complainants' account of their journey from Ingushetia to Sweden has been vague and lacking in details, the State party, like the Migration Board, cannot rule out the possibility that the complainants may have left the Russian Federation legally with their own international passports and with approved visas for the Schengen area, or that they may have resided in an area outside of Chechnya before departing for Sweden. Furthermore, although the linguistic analysis indicates that the complainants originate from Chechnya, no documentation has been provided to show where the complainants had their last place of residence. Thus, the State party shares the view of the Migration Board that the complainants may have resided in another part of the Russian Federation before travelling to Sweden. Hence, the State party holds that, even if the complainants have plausibly demonstrated that they are nationals of the Russian Federation, they have not plausibly established that their last place of residence was in Chechnya.

4.18 Furthermore, the first and second complainants have claimed to belong to the Mialkhiy group, whose members have been subject to discrimination and harassment by the Russian authorities. The State party notes, however, that the complainants have not claimed

to have been personally subjected to any persecution on account of their ethnic origins or to have grounds for asylum for this reason alone. In any event, the State party holds that the fact that the complainants belong to the Mialkhiy group is not in itself sufficient to show that an expulsion of the complainants to the Russian Federation would be in violation of article 3 of the Convention.

4.19 The first complainant has stated before the Committee that he actively fought alongside the rebel forces during the first war with the Russian Federation, between 1994 and 1996, and that he was of interest to the Russian authorities because of his contact with the leaders of the rebellion, Shamil Basajev and Doku Umarov. However, the State party notes that, before the domestic migration authorities, the first complainant did not claim that the Russian authorities had initiated any formal investigations against him in the light of his alleged contacts with these rebel leaders. Moreover, as is evident from the available country of origin information, the authorities seem to be primarily interested in insurgents who have been active during the past few years, and are no longer showing interest in rebels who have not been active in recent years. The State party also notes that, had the first complainant supported the rebel forces and had he had connections with Doku Umarov, as alleged, it is unlikely that the authorities would have left him alone. Furthermore, even if the first complainant before the Committee claims to have assisted the rebels in 2007 and 2008 by delivering food and medicine, it has never been suggested that this has come to the authorities' attention. On the contrary, the first complainant stated before the Committee that he kept a low profile during this period of time and therefore did not attract any attention from the authorities. In the light of the above, the State party holds that it is unlikely that these activities would have led to any threats from the authorities against the first complainant.

4.20 Moreover, before the Committee the first complainant has claimed to have openly criticized the regime after the death of his brother in 2003. In addition, he has stated that he was monitored by the authorities after that. However, he has not been able to specify in what way his criticisms were manifested, nor how he could know with certainty that he was monitored by the authorities and that this is not just speculation on his part. Thus, in the State party's view, the complainants have not plausibly demonstrated their need for protection on this ground.

4.21 The first complainant also claims that he was arrested in 2007, suspected of having been involved in the murder of a police officer. During his arrest, which lasted for 10 days, he claims that he was severely beaten and tortured with electricity. However, during the domestic asylum proceedings, the first complainant has provided conflicting accounts of the reason for this arrest. To begin with, during an interview held by the Migration Board on 13 April 2012, he stated that he was accused of having killed seven police officers in 2007 and that he was arrested and subjected to torture for that reason. However, in another interview held with the Migration Board, on 14 March 2012, he stated that, when his nephew's friend was killed on 22 August 2007, the police found his telephone number in the mobile phone belonging to the nephew's friend. The following day, he received a phone call from the police authorities requesting him to submit his SIM card and this led to his arrest. Moreover, during an oral hearing before the Migration Court, the first complainant stated that he had exchanged telephone numbers with his nephew's friend and that he was later asked by the Grozny police authority to come to the police station. There he was shown a photograph of the body of his nephew's friend, who, according to the police, had murdered seven police officers. The first complainant was then questioned about his contacts with his nephew's friend and tortured with electricity. In addition, during an interview held on 3 April 2012, the second complainant stated that a mobile phone containing her husband's phone number was found next to a deceased police officer and that this was the reason behind the arrest. She believes that this occurred in 2007. The State party, like the Migration Court, finds that the complainants have not given a reasonable

explanation for the above-mentioned inconsistencies, which therefore adversely affect the credibility of their account.

4.22 Neither the Migration Board nor the Migration Court have questioned the veracity of the first complainant's claims regarding torture. A medical investigation of these claims has not been deemed necessary. The State party agrees with the Migration Board and the Migration Court that the fact that the first complainant was exposed to torture in 2007 is not in itself sufficient to plausibly demonstrate that he or his family would risk being subjected to treatment contrary to article 3 of the Convention upon return to their home country. The State party finds it important to emphasize that, as the Migration Board has found, the first complainant admits to having lived in Chechnya after 2007 without claiming to have been subjected to any specific threats until late 2011. Moreover, as stated by the Migration Court, in assessing the need for protection, the assessment must be based on the current security conditions, taking into account relevant information on the applicant's country of origin. Available country information shows that the conflict in Chechnya has changed in recent years. According to reports, the current Chechen insurgents are no longer fighting for the independence of Chechnya from the Russian Federation, but rather for the formation of a pan-Caucasian Islamic State based on sharia law.[10] Thus, as has been stated above, the authorities are primarily interested in insurgents who are currently involved in fighting, and are no longer showing interest in insurgents who have not been active in recent years. In the light of the above, the State party agrees with the assessment of the Migration Board and the migration courts that the first complainant is currently not at risk of treatment contrary to article 3 of the Convention on those grounds.

4.23 Furthermore, the first complainant has submitted two summonses for him for police interviews as a suspect. According to the first complainant, the summonses were sent to the complainants' former home in Chechnya. The new owner of the house gave the summonses to the first complainant's sister, who then sent them to the complainant in Sweden. The State party agrees with the view held by the Migration Board and the Migration Court that the summonses are not in themselves sufficient to plausibly demonstrate the complainants' need for protection. In this respect, the State party notes, firstly, that the summonses are of a simple nature and therefore of low probative value; secondly, that the summonses do not state which offence he is suspected of; and, thirdly, the summonses cannot be linked to the first complainant personally as he has not plausibly demonstrated his identity.

4.24 As the complainants have not plausibly demonstrated their need for protection by the written evidence cited, the Swedish Migration Board and the migration courts have assessed whether the complainants' oral submissions have plausibly demonstrated their need for protection in Sweden. In this regard, the State party notes that, when assessing the credibility of an asylum account, emphasis is normally given to the coherence of the story and the absence of internal contradictions. Furthermore, the circumstances cited must not contradict generally known facts. Moreover, it is important that the essential features of the story remain unchanged in the course of the asylum proceedings before the different authorities.

4.25 The State party submits that the Migration Board and the Migration Court have not deemed the complainants' grounds for asylum credible as their accounts of the events of 7 September 2011 were inconsistent. For example, when applying for asylum, the first complainant claimed to have been at a relative's home at the time of his nephew's arrest. He further stated that he subsequently left the house on the night of 4 or 5 September 2011.

[10] The State party refers to Norwegian Country of Origin Information Centre, *Temanotat Tsjetsjenia: Tsjetsjenske myndigheters reaksjoner mot opprørere og personer som bistår opprører*, pp. 5 and 14-16, and *Temanotat Tsjetsjenia: Sikkerhetssituationen*.

However, during the investigation held by the Migration Board the first complainant recounted that he and his family were at home and asleep when their neighbour, early in the morning of 7 September 2011, told them that there were military vehicles outside the nephew's house. The first complainant then went to his nephew's house to find out what had happened, but the nephew had already been taken away and the first complainant returned home. During the oral hearing before the Migration Court, the first complainant however gave a third version of the events of 7 September 2011 in which the dates of 4 and 5 September were never mentioned. The first complainant then claimed that he did not return home after having been in his nephew's house. Instead he went from the house straight to the village centre and from there he took a taxi to a friend's house in Ingushetia. In the State party's view, the above-mentioned inconsistencies negatively affect the credibility of the first complainant's account.

4.26 In addition, the first complainant has submitted inconsistent information concerning how and when he obtained the telephone number of a man who might be able to help him. Before the Migration Board, he claimed to have acquired the telephone number through phone calls made from home after he had returned from his nephew's house. However, before the Migration Court, he stated that he received the telephone number from a taxi driver in the village centre, where he went after the visit to his nephew's house.

4.27 Furthermore, the second complainant has also submitted contradictory accounts of the events of 7 September 2011. Before the Migration Board, she stated that the first complainant came back after having been in his nephew's house and that he then went to the village centre. However, during the oral hearing before the Migration Court, she held that she also went to the nephew's house, where she met her husband, who went from there to the village centre. The State party agrees with the assessment made by the Migration Court that it seems strange that neither the first nor the second complainant were able to clearly remember the events of the day in question, in particular as these events took place on the same day and as they were alleged to have been so dramatic that the first complainant had to flee his home, leaving his wife and three children behind. The fact that the first and second complainants' accounts in this respect are both internally contradictory and differ considerably from each other, in the State party's opinion, adversely affects the credibility of the complainants' accounts.

4.28 Moreover, the second complainant has submitted varying accounts regarding the sale of their house. She stated before the Migration Board that the house was bought by an intermediary, who buys houses cheap and then resells them at a higher price. However, before the Migration Court the second complainant instead stated that the house was bought by a man named Hussein, who let her and the children remain in the house until they moved to the first complainant's friend in Ingushetia.

4.29 Furthermore, during the asylum investigation carried out by the Migration Board, the first complainant answered the question of whether he was wanted by the authorities throughout the Russian Federation only by saying that he probably was. In a subsequent written submission, however, he stated that a friend of his had found out that the first complainant was wanted by the federal authorities when he saw a poster with the first complainant's photograph on it, as early as 20 February 2012, i.e. when the first complainant claimed that he was still in his country of origin. The State party therefore finds the first complainant's statements to be contradictory in this respect.

4.30 Furthermore, a large part of the complainants' submissions have consisted of their own conclusions, for example, the claim that the first complainant was filmed by a surveillance camera when driving into Grozny and the claim that the first complainant's nephew gave his name to the authorities after having been tortured. These claims have not been substantiated by any objective information. In addition, the statements made by the complainants during the national asylum process are in several respects neither reasonable

nor plausible. If the police authority did indeed suspect that the first complainant's car had been used in connection with acts of terrorism, it does not appear reasonable for them to have burned the car when the house was searched. Furthermore, it does not seem reasonable that the police authority, when they arrested the first complainant's nephew, did not visit the complainants' house to arrest the first complainant as well, given that they lived only a few hundred metres apart. The State party notes that, if threats had been made against the first complainant by the authorities, it would have seemed reasonable for him to have warned his family and for the complainants to have fled their home together immediately, in particular as the first complainant has claimed to have been persecuted on previous occasions.

4.31 The State party also submits that the information cited in the case shows that neither the first complainant nor any member of his family had been subjected to any form of treatment constituting grounds for protection after 2007. In the light of the above, the Migration Court considered that the complainants had not plausibly demonstrated that the domestic authorities were interested in them or that if returned to their home country they would risk being subjected to treatment constituting grounds for protection.

4.32 In summary, the State party maintains that several aspects of the complainants' claims are not plausible as the complainants have altered their statements during the proceedings and their claimed grounds for asylum contain contradictory elements. Thus, the complainants' claims are not credible and the circumstances invoked by the complainants are not sufficient to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Accordingly, the enforcement of the expulsion order would, under the present circumstances, not constitute a violation of article 3 of the Convention. Since the complainants' claim under article 3 fails to attain the basic level of substantiation, the communication should be declared inadmissible as being manifestly unfounded.

4.33 Concerning the merits, the State party reiterates that the present communication reveals no violation of the Convention.

Complainants' comments

5.1 In their submission dated 6 October 2014, the complainants submit that the State party's observations are at odds with reports on the human right situation in the Russian Federation, and in particular with the report of the Department for International Law, Human Rights and Treaty Law of the Swedish Foreign Office.[11] The latter states that the most serious violations of human rights still occur in the Northern Caucasus; that in the name of the fight against terrorism abuses are inflicted on the civilian population in the form of torture, arbitrary arrests and kidnappings; that there are unconfirmed reports of political murders and disappearances sanctioned by the authorities; that security forces assaults on the civilian population continued, as a rule without judicial consequences; that few victims dare to step forward due to fear of reprisals; and that it is therefore difficult to obtain reliable statistics on crimes constituting violations against human rights in Chechnya. They submit that the report describes a country that routinely abuses detainees, harasses those who dare to step forward and where justice for victims and accountability are non-existent. The complainants maintain that the State party's analysis of the supposed change in the nature of the conflict was "spurious or irrelevant" and that, according to the former Council of Europe Commissioner for Human Rights Thomas Hammarberg, there is an atmosphere of terror in Chechnya. They maintain that opining who is at risk and who is not "is an intellectual exercise that bears no relationship to the realities on the ground".

[11] The complainants provide a link to the report, available only in Swedish.

They refer to a statement of the Parliamentary Assembly of the Council of Europe,[12] describing "a climate of pervading fear", disappearances of government opponents and human rights defenders, reprisals against the families of suspected fighters and intimidation of the media and civil society, all in an atmosphere of "personalization of power" in Chechnya. They further note that the former United Nations High Commissioner for Human Rights has also called for accountability and has referred to[13] some serious setbacks, including murders, intimidation and harassment of human rights defenders and investigative journalists and independent media, and apparent serious miscarriages of justice during her mission to the Russian Federation in 2011. They lastly refer to the Human Rights Watch *World Report 2014*, in which a similar litany of abuse is described.[14] They maintain that this is the background against which their history must be judged.

5.2 The complainants reiterate that the first complainant was an active resistance fighter in the 1994-1996 conflict; that following the renewal of the hostilities in 1999 he continued to support the resistance by delivering food to partisans. They further submit that the first complainant's brother was subjected to severe repeated beatings and then killed while in custody in 2003, because he was suspected of being active in the resistance; that the first complainant had been an outspoken critic of the regime and had been under intermittent surveillance by the authorities; that in 2007 he had been arrested and suffered beatings and torture; that, after his release, he continued to deliver food and supplies to the partisans; that, following explosions in Grozny in 2011, his nephew had been arrested and the first complainant was afraid that he would be identified as a suspect, because his nephew would be tortured and would disclose information about his activities to the authorities. They maintain that the first complainant's decision to flee to Ingushetia was based on the above.

5.3 With regard to the contradictions in their statements, the complainants submit that these were minor inconsistencies that did not diminish their credibility and that modern research on testimonials and witness statements has established that a testimony given repeatedly with no inconsistencies whatsoever is a sign of "learning by rote" and therefore of diminished credibility.[15] Concerning their identity, the complainants submit that the documents presented by them do not meet Western standards, but that the above has no bearing on the basic issue of their identity. Regarding the summonses, the complainants submit that it had been established a long time ago that "this is how such summonses look" and that it was unclear why the State party states the obvious, "unless the purpose is to somehow insinuate that these papers are not genuine".

5.4 The complainants submit that their last place of residence cannot be determined from their identity papers, but maintain that the above has no bearing on their asylum claim. They refer to a letter from UNHCR (copy submitted) stating that it was not reasonable for a Chechen asylum seeker to seek refuge elsewhere in the Russian Federation. They further submit that the first complainant was beaten and tortured by the authorities in the Russian Federation. The State party has accepted that testimony, but then "chose to ignore its responsibilities as defined not only by its own internal documents, but also by international legal precedents". They refer to a judgement of 9 March 2010 of the European Court of Human Rights, *R.C. v. Sweden* (application No. 41827/07), stating that, if the authorities in

[12] The complainants refer to a news item published at the website of the Council of Europe on 22 June 2010, available at http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=2970&lang=2.

[13] The complainants refer to a news item of 23 February 2011 on the High Commissioner's mission to Russia, entitled "Human rights chief calls for accountability on her mission to the Russia". Available from www.ohchr.org/EN/NewsEvents/Pages/HCMissionToRussia.aspx.

[14] The complainants refer to www.hrw.org/world-report/2014/country-chapters/russia.

[15] The complainants refer to B. Uttl, N. Ohta, and A.L. Siegentahler (eds.), *Memory and Emotion: Interdisciplinary Perspectives* (Singapore, Blackwell Publishing), pp. 59-82.

a country have previously tortured a person, then it must be taken as a given that the torture will be repeated. The above judgement had been addressed by the Migration Board in an internal guideline, signed by the than acting Head of Legal Affairs. In another internal guideline, the Head of Legal Affairs had stated that asylum seekers should be referred to forensic medical experts for examination of torture-related injuries. The first complainant finally reiterates that his brother had been killed in custody of the Russian authorities and that the whereabouts of his nephew, arrested in 2011 were unknown; considering the human rights record of the Government of the Russian Federation it was not unreasonable to fear that he had also been killed. In summary, the complainants maintain that there had been a clear pattern of personal harassment and persecution and that there were substantial grounds for believing that the risk that the first complainant would be subjected to torture was real, imminent and highly probable.

State party's additional observations on admissibility and the merits

6.1 In its submission dated 19 January 2015, the State party submits, in relation to the complainants' contentions about the current general human rights situation in the Russian Federation, that information regarding the human rights situation in the Russian Federation can be found in recent reports and states its assumption that the Committee is well aware of the general human rights situation in that country, including the situation in Northern Caucasus. The State party does not wish to underestimate the concerns that may legitimately be expressed with regard to the current human rights situation in the Russian Federation and especially in the region of North Caucasus; however, it maintains that the current situation in Chechnya does not, in itself, suffice to establish that the general situation in the region is such that an expulsion of the complainants would entail a violation of article 3 of the Convention.[16] Hence, the State party contends that the expulsion of the complainants to the Russian Federation would only entail a breach of the Convention if they could show that they would be personally at risk of being subjected to treatment contrary to article 3.

6.2 The State party would also like to reiterate that neither the Migration Board nor the Migration Court have questioned the veracity of the first complainant's claims regarding torture. A medical investigation of these claims has therefore not been deemed necessary. Notwithstanding this conclusion, the State party holds, as the Migration Board and the Migration Court did, that the fact that the first complainant was exposed to torture in 2007 is not in itself sufficient to plausibly demonstrate that he or his family would risk being subjected to treatment contrary to article 3 of the Convention upon return to their home country.

6.3 The State party considers that a number of factors give cause to question the veracity of the complainants' claim that they would risk being subjected to torture in violation of article 3 of the Convention upon return to the Russian Federation. In that respect, the State party agrees with the assessment made by the Migration Board and the Migration Court that the complainants' accounts contain contradictory information and conflict with generally known facts about the complainants' country of origin.

6.4 In summary, and with reference to what has been stated above and in the State party's initial observations, the State party holds that the complainants have not plausibly demonstrated that the Russian Federation authorities were interested in them or that if returned to their home country they would risk being subjected to treatment constituting grounds for protection. Hence, the State party maintains that, as has been held by the

[16] The State party refers to e.g. the European Court of Human Rights, *I v. Sweden*, application No. 61204/09, judgement of 5 September 2013, para. 58.

domestic authorities, the complainants' claims are not credible and the circumstances invoked by the complainants are not sufficient to show that the alleged risk of torture fulfils the requirements of being foreseeable, real and personal. Accordingly, enforcement of the expulsion orders would, under the present circumstances, not constitute a violation of article 3 of the Convention.

6.5 Lastly, the State party emphasizes that it fully maintains its position regarding the admissibility and the merits of the present complaint as expressed in its observations of 11 July 2014.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any complaint submitted in a communication, the Committee against Torture must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes the State party's submission that it does not contest that all available domestic remedies have been exhausted in the present case and concludes that it is not precluded from examining the communication by the requirements of article 22 (5) (b) of the Convention.

7.3 The Committee notes the State party's submission that the communication is manifestly unfounded and thus inadmissible pursuant to article 22 (2) of the Convention. The Committee observes, however, that the complaint raises substantive issues under article 3 of the Convention and that those issues should be examined on the merits. As the Committee finds no further obstacles to the admissibility, it declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

8.1 In accordance with article 22 (4) of the Convention, the Committee has considered the communication in the light of all information made available to it by the parties.

8.2 With regard to the first complainant's claim under article 3 of the Convention, the Committee must evaluate whether there are substantial grounds for believing that he would be personally in danger of being subjected to torture, should he be returned to the Russian Federation. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would be returned.[17] It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a

[17] See, inter alia, communication No. 470/2011, *X. v. Switzerland*, decision adopted on 24 December 2014.

consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

8.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable (para. 6), the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a foreseeable, real and personal risk.[18] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,[19] while at the same time it is not bound by such findings and instead has the power, provided in article 22 (4) of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

8.4 In the present case, the Committee notes that the State party has acknowledged that human rights violations, including disappearances, abuse, torture and killings, in the Russian Federation are still being reported. However, while not underestimating the concerns that may legitimately be expressed with respect to the human rights situation in the Russian Federation and especially in the Northern Caucasus region, the State party held that the current situation in Chechnya, as described in the above-mentioned reports, does not, in itself, suffice to establish that the general situation in the region is such that an expulsion of the complainants would entail a violation of article 3 of the Convention.

8.5 In assessing the risk of torture in the present case, the Committee notes the complainants' contention that there is a foreseeable, real and personal risk that the first complainant will be imprisoned and tortured if returned to the Russian Federation. The Committee notes the complainants' claims that the first complainant's brother was subjected to severe repeated beatings and killed while in custody in 2003 because he was suspected of being active in the resistance; that the first complainant had been an outspoken critic of the regime and had been under intermittent surveillance by the authorities; that in 2007 he had been arrested and suffered beatings and torture; that after his release he continued to deliver food and supplies to the partisans; that, following explosions in Grozny in 2011, his nephew had been arrested; and that the first complainant was afraid that he would be identified as a suspect, because his nephew would be tortured and would disclose information about his activities to the authorities.

8.6 As to the State party's position in relation to the assessment of the first complainant's risk of being subjected to torture, the Committee notes that the State party has accepted that the complainant had been subjected to torture in 2007 and that it has not questioned his account that his brother and nephew had been affiliated with the Chechen resistance and that his brother had died in custody and his nephew had been arrested in 2011. The Committee further notes that the State party has questioned other elements of the complainants' account, namely that their last place of residence was in Chechnya and the exact details of the events on 7 September 2011, which preceded the departure of the first complainant from Chechnya. The Committee, however, considers that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the complainants' presentation of the facts are not material and do not raise doubts about the general veracity of their claims.[20] The State party also has stated that the summonses

[18] See, inter alia, communications No. 203/2002, *A.R. v. Netherlands*, decision adopted on 14 November 2003; No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005.

[19] See, inter alia, communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, para. 7.3.

[20] See, for example, communications No. 21/1995, *Alan v. Switzerland*, Views adopted on 31 January

that were issued for the first complainant were of a simple nature and therefore of low probative value and that these did not state which offence he is suspected of.

8.7 The Committee observes that, even without taking the disputed facts into consideration, it remains undisputed that the first complainant had been arrested and tortured in the past on account of being suspected of supporting separatist activities in Chechnya; that members of his family have been persecuted for such activities; and that the Russian Federation authorities had been looking for him after his departure from the country, as demonstrated by the summonses provided, albeit for a purpose that is unclear. Taking into consideration the general human rights situation in Chechnya and in particular that, according to State party's own submission, there are credible reports that individuals that are perceived to be connected with militant activities are at a higher risk of being arbitrarily arrested and subjected to torture, the Committee concludes that the first complainant has established a foreseeable, real and personal risk of being tortured if he was to be returned to the Russian Federation.

9. The Committee, acting under article 22 (7) of the Convention, therefore concludes that the forcible removal of R.G. to his country of origin would constitute a violation of article 3 of the Convention.

10. As the cases of R.G.'s wife and their four children, who were under age at the time of the family's asylum application in Sweden, are largely dependent upon his case, the Committee does not find it necessary to consider these cases individually.

11. In the light of the above, the Committee, acting under article 22 (7) of the Convention, concludes that the complainants' removal to the Russian Federation by the State party would constitute a breach of article 3 of the Convention.

12. The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainants to the Russian Federation or to any other country where they run a real risk of being expelled or returned to the Russian Federation. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of the transmittal of the present decision, of the steps it has taken to respond to the above considerations.

1995, para. 11.3; and No. 43/1996, *Tala v. Sweden*, Views adopted 15 November 1996, para. 10.3; No. 41/1996, *Kisoki v. Sweden*, Views adopted on 8 May 1996, para. 9.3.